

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANDREA FRANKIEWICZ and RUTH
PEREZ,

Plaintiffs,

-against-

MANHATTAN CRYOBANK, INC., and
CNTP MCB, INC.,

Defendants.

1:20-cv-05157 (JLR)

**MEMORANDUM OPINION
AND ORDER**

JENNIFER L. ROCHON, United States District Judge:

Plaintiffs Andrea Frankiewicz and Ruth Perez (“Plaintiffs”), individually and on behalf of similarly situated individuals, commenced this action on July 6, 2020, against Manhattan Cryobank, Inc. and CNTP MCB, Inc. (“Defendants”). *See* ECF No. 1 (“Compl.”). Plaintiffs assert claims for breach of contract, breach of express warranty, and unjust enrichment, as well as declaratory and injunctive relief under 28 U.S.C. § 2201. *See generally id.* Defendants have not filed an answer or otherwise appeared in this action. After the deadline to answer expired, Plaintiffs requested and the Clerk of Court entered certificates of default against both Defendants. *See* ECF Nos. 21, 22. Plaintiffs moved for class certification under Rule 23 of the Federal Rules of Civil Procedure and requested leave to take discovery. *See* ECF Nos. 51, 54, 57. The Court thereafter referred the motion for class certification and general pretrial management to the designated Magistrate Judge. *See* ECF No. 58.

On August 18, 2023, the Magistrate Judge issued a Report and Recommendation (“Report”). ECF No. 59. The Report recommends that the Court grant Plaintiffs’ motion for class certification and Plaintiffs’ request for leave to take discovery. *Id.* The Report warns, in emphasized text, that failure to timely object within 14 days of service would result in waiver of

the right to object and preclude appellate review. *Id.* at 15. Plaintiffs served the Report on Defendants on August 16, 2023. *See* ECF No. 61. No party has filed any objections to the Report.

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *see* Rule 72(b); *Grassia v. Scully*, 892 F.2d 16, 19 (2d Cir. 1989). Parties may object to a magistrate judge’s recommended findings “[w]ithin 14 days after being served with a copy of the recommended disposition.” Rule 72(b)(2). “In a case such as this one, where no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Lifeguard Licensing Corp. v. Kozak*, 371 F. Supp. 3d 114, 118 (S.D.N.Y. 2019) (internal citation omitted); *Lee v. Lending Tree*, 473 F. Supp. 2d 435, 436 (S.D.N.Y. 2007) (“The district court adopts a Magistrate Judge’s report and recommendation when no clear error appears on the face of the record.”). A party’s “failure to object timely to a report waives any further judicial review of the report” so long as the party received “‘clear notice’ of the consequences of their failure to object.” *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *see Lee*, 473 F. Supp. 2d at 436.

Here, the deadline to object to the Report has passed and no party has filed any objection. The Court has therefore reviewed the Report for clear error. *See Lifeguard Licensing Corp.*, 371 F. Supp. 3d at 118; *Lee*, 473 F. Supp. 2d at 436. The Court finds that the Report’s reasoning is sound, grounded in fact and law, and not clearly erroneous. Accordingly, the Court adopts the thorough and well-reasoned Report in its entirety. *See Report.*

Consistent with the Report and pursuant to Federal Rule of Civil Procedure 23, the Court appoints Plaintiffs Andrea Frankiewicz and Ruth Perez as class representatives, appoints Steckler Wayne Cherry & Love PLLC as class counsel, and certifies the following class pursuant to

Federal Rule of Civil Procedure 23: “All persons who purchased sperm from Manhattan Cryobank, Inc. after November 1, 2014 but before June 5, 2018 that was donated to Manhattan Cryobank, Inc. prior to November 1, 2014.” *Id.* at 6, 9-10; *see also* ECF No. 57 at 16, 21; ECF No. 57-1.

In sum, the Court grants Plaintiffs’ motion for class certification and Plaintiffs’ request for leave to take discovery.

The lack of any timely objections, in light of the clear notice provided in the Report, precludes appellate review of this decision. *See Frank*, 968 F.2d at 300; *Lee*, 473 F. Supp. 2d at 436.

The Clerk of Court is respectfully directed to terminate ECF No. 54.

Dated: September 6, 2023
New York, New York

SO ORDERED.



JENNIFER L. ROCHON
United States District Judge